

Exhibit 8

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so...

Q. I think we probably talked about this earlier. I'm just wondering who was in charge of maintaining the Goldmine database during its existence at Burst? I think you have already mentioned Jason Boatman; correct?

A. Correct.

Q. And in addition to Mr. Boatman, who else would have been in charge of maintaining Goldmine?

A. Well, it may have been one or both of the other two individuals I named, Gary remain me and Crystal Neal. At some point I know Mr. Boatman stopped overseeing the database. It was assumed by new employees.

Q. And by the time you arrived in March of 1999, Burst was already using Goldmine actively; correct?

A. Correct.

Q. In the time period roughly it was being used in March 1999 when you arrived, and then it was used at Burst up until when?

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A. Well, my recollection is that, again, in August of 2000 there was a migration planned to move the Goldmine data to Vantive.

Q. Are you aware of any of the purposes for which Burst acquired the Goldmine software?

A. The purpose that I understand was to manage sales leads and track contacts.

(Whereupon, Deposition Exhibit 3
was marked for identification.)

MR. JOHNSON: Q. Mr. Walters, I'm showing you what's been marked as Exhibit Number 3. It appears to be a PowerPoint presentation with the Bates numbers BUR0152722 through BUR0152725. Feel free to review the document. Just let me know when you are done.

A. Okay.

Q. Have you ever seen this document before, Mr. Walters?

A. I don't recall seeing this before.

Q. And I appreciate there is not a date on here. Do you have any idea when this might have been created?

A. Well, based on this last page, it says "continue with Goldmine until at least second quarter 2000." it would have to be prior to that period, obviously.

Q. I just wanted to ask you some questions about

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the very first slide which I believe was marked as number one in the bottom right-hand corner of the slide. It also is marked as BUR0152722. And under the objectives the first one reads customers contact database. Did you understand that this was one of the objectives of Burst in acquiring Goldmine, to manage, or to create a customer contact database?

A. Yes.

Q. And the second objective which reads "essential database for all employees," would you also agree that this was an objective of Burst in acquiring Goldmine?

A. Yes.

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Q. Can you explain to me how Goldmine was a central database accessed by all employees?
A. Well, based on my own usage of the database, when, in the office at Burst, you would connect with the server and synchronize your local data with the database.
Q. Just to clarify, you are saying when you are in the office. Was that in the San Francisco?
A. Correct.
Q. Office?
A. I also believe there was a way to connect through a dial-up connection.

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Q. Was this -- and the San Francisco office, was this on your local network there that you would connect into Goldmine?

A. Yes.

Q. Could you use Goldmine without connecting to the database?

A. There was a way to run a local copy on your laptop or computer.

Q. So, would you say that Goldmine was a central database to the extent that employees could all log in and share information?

A. Yes.

Q. The third objective on this slide is track sales progress. Did you understand that to also be an objective of Burst in acquiring Goldmine?

A. Yes.

Q. And can you explain for me how Goldmine tracked sales progress?

A. Well, as I recall, there was a field in the database for the initial contact, and then who the contact was assigned to. And as the process was underway, it could be -- the various note fields could be updated to reflect the sales process.

Q. Could you explain for me these notes fields?

A. There were just -- I just recall a couple of

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fields where you could enter comments and so on.

Q. Would this be a sort of narrative description?

A. Yes.

Q. And was that limited in length at all, or could you write several paragraphs?

A. I don't believe there was any limit to it.

Q. And was this the sort of field where a sales representative could recount conversations that they had had with various prospects?

A. They might.

Q. Would it be used to log possibly customer complaints?

A. Yes. We did attempt to use it for that.

Q. If a potential Burst customer ultimately chose not to go with the Burstware solution, would that be reflected in the notes field or in a different field?

A. It's possible.

Q. Did Burst generate any lost business reports?

A. Not that I recall.

Q. Do you know if Goldmine had the capability of

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producing lost business reports?

A. I do not.

Q. All right. Back to the slide. The fourth objective there just states "forecasts." and did you understand that one of the goals of Burst in acquiring

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Goldmine was to be be able to forecast sales?

A. As I understand it, these objectives were things that people wanted the Goldmine database to do. And my recollection is that Goldmine could not accomplish all of them. And that was the reason that we began searching for another database that was capable of managing all these different objectives.

Q. Do you know if Goldmine had any capability of performing forecasting functions?

A. It may have. I don't recall. I never used that myself, so...

Q. And the final objective, the fifth one, reads "product direction." Did you understand that Burst sought to use Goldmine to influence product direction?

A. I'm not sure what they mean by product direction. But I do know we wanted a database that would allow us to provide customer feedback. As well as update, you know, update -- track updates of the product.

Q. You mentioned customer feedback. So, to the extent that a customer would comment on wanting perhaps a particular feature in Burst, that would be included in the Goldmine database?

A. Potentially.

Q. And if it were, that could -- those comments

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could potentially impact a -- the direction of Burst product.

A. Potentially, yes.

Q. On the last slide on page four, Bates number BUR0152725, the fifth point under "Recommendations" reads -- and you mentioned this previously -- "Continue with Goldmine until at least second quarter 2000."

Do you know, did Burst continue with Goldmine through that time period?

A. My recollection is that we did.

Q. Did you -- did you come to understand what version of Goldmine Burst used?

A. I don't recall.

MR. JOHNSON: Exhibit 3.

THE REPORTER: This would be 4, I think.
(whereupon, Deposition Exhibit 4
was marked for identification.)

MR. JOHNSON: Q. Showing you what's been marked as Exhibit 4, it's a Burst.com, Inc, asset listing report period ending September 30, 2000. It's also dated in the upper left hand corner 11/2/00. It's Bates numbers BUR5132241 through BUR1532248. And you are free to review this, Mr. Walters. What I'm interested in is page six. That number is in the top left hand corner. It's also BUR5134246. And in the

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MR. JOHNSON: Q. Showing you what's been marked as Exhibit 9, Mr. Walters, and I'm interested in the first e-mail there, which would be the second one on the page so, first in chronological order the March 30th e-mail and this document is Bates number BUR5960381. And it's an e-mail from Jason Boatman to Tom Koshy and it's copying Eric Walters and Dave general nine. Do you recall receiving this e-mail on March 30, 1999?

A. No, I don't.

Q. Any reason to believe you wouldn't have received it?

A. No.

Q. Have you had a chance to review the e-mail?

A. Yes.

Q. I just wanted to ask you a few things about -- it appears there was an entry from Goldmine cut and pasted into this e-mail. Is that your understanding?

A. Yes.

Q. And the -- it starts out here with some as risks and then it says Eric W. Is that a reference to yourself?

A. It appears to be.

Q. And why would that be there? Does that mean that you authored this particular excerpt?

A. I would say this was an example -- that Jason

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Boatman was using an entry I had made in Goldmine as an example of how you can cut and paste from Goldmine into Outlook or vice versa.

Q. And concerning the content of the data that you had entered and that's cut and pasted into this e-mail, did you typically input customer questions into Goldmine?

A. I did on occasion.

Q. And I believe you have already testified that at times you have viewed customer complaints in Goldmine also.

A. Viewed them?

Q. Yes. Correct me if I am wrong, but you have access to view other people's, other sales reps' files, don't you?

MR. WECKER: You mean their comments --

MR. JOHNSON: Correct.

MR. WECKER: -- in the Goldmine database?

MR. JOHNSON: Correct, yes.

THE WITNESS: We -- as I recall, everyone had access to all the contacts, so if someone else made an entry into the database I could go to that entry after they entered the data and take a look at it.

MR. JOHNSON: Q. Did you view other -- why don't we start with customer questions in the database

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other than what you yourself input.

A. I am sorry. Say again.

Q. In just viewing and working with Goldmine since March of 1999, have you viewed other customer questions in the database besides those you have entered

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period to the present Burst always required an NDA?

A. Yes.

Q. I would like to show you what's being marked as Exhibit 11.

MR. WECKER: 11 or 12?

THE REPORTER: It should be 12, I think.

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(Whereupon, Deposition Exhibit 12
was marked for identification.)

MR. JOHNSON: Q. Mr. Walters, I have handed you what's been marked Exhibit Number 12, which is a PowerPoint presentation of instant video technologies, Inc, a company snapshot dated July 27, 1999. I will give you a minute to page through it.

My first question will just be whether you recall ever seeing this before.

A. No, I do not.

Q. And the page I'd like to ask you about is -- tally, the document is BUR0168354 to BUR0168408. And if I can I'd like to direct your attention to BUR0168381.

A. Eight -- I am sorry?

Q. Ending in 381.

And just -- the slide is entitled "sales" and the second point there is "forecasting." and the first comment made there is "currently forecasting is through both Goldmine and manual input." and then for 1999 the forecast is 3 million and for 2000 it's 20 million. And I just -- we talked about forecasting a little bit earlier. Does this refresh your recollection at all of Goldmine's ability to provide forecasts for Burst?

A. Somewhat. I do recall that it had tools and templates built into it that would allow you to create

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various reports based on the data points that are in the database. And forecasting obviously is one of them here.

Q. The document seems to suggest that Burst used some sort of a high bridge approach relying on Goldmine in part and also manual input?

A. Apparently.

Q. Do you have an understanding of how Goldmine would have been used or what figures or inputs would have been entered into Goldmine?

A. I do not.

Q. And related to that do you know how they would have reached those figures of 3 million for 1999 and 20 million for 2000?

A. I do not.

MR. JOHNSON: Exhibit 13.

(Whereupon, Deposition Exhibit 13
was marked for identification.)

MR. JOHNSON: Q. All right, Mr. Walters, I'm showing you what's been marked as Exhibit 13, which is an e-mail thread. The one most recent in time at the top is dated July 20, 1999 from Craig Emerzian to Richard Lang, copying Tom Koshy and Kyle Faulkner.

I just want to ask you about the Goldmine entry in the top e-mail. And also, on the second

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page -- I am sorry. The Bates number is BUR0325625 to 626. On page 626 there is an e-mail from you, Mr. Walter, to Richard Lang, copying Tom Koshy, forwarding an article on Apple and streaming. Do you recall sending this e-mail on or about July 19, of 1999?

A. I don't recall it, no.

Q. Do you recall what Burst was able to, or any compatibility between Burst and Apple products around this time frame?

A. I'm sorry.

Q. Was there compatibility with the Burst product at this time July 13, 1999, in any of Apple -- with Apple's platform or their products?

A. We did not have a Burstware player for the Macintosh if that's what you are asking.

Q. Thank you. It is. Was that functionality or feature being requested by customers?

A. From time to time we did receive requests, inquiries, whether we would support the Macintosh platform.

Q. And asset forth in that, the July 20th e-mail on the top of the first page here from Mr. Emerzian, I understand that your name isn't on the "from" or "to" or copied lines. Have you seen this apart from that?

A. Seen which?

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Q. Seen this 300 and the e-mail from Mr. Emerzian?

A. I don't recall seeing this, no.

Q. The specific comment that says Dave G, which I assume is Dave general nine; is that correct?

A. Yes.

Q. April 22nd, 1999. And in there he mentions, and I quote, "he and you don't say San no were very impressed with BW. Does that stand for Burstware?

A. I would assume so, yes.

Q. But needed it on a Mac player for their customer. Is this an example of a customer requesting certain functionality from Burstware and logging it in Goldmine?

A. It appears to be.

Q. Have you seen other entries in Goldmine requesting product features?

A. I don't recall directly.

Q. Okay. Anything else in Goldmine on the Mac player or request for a Mac player?

A. Do I recall any.

Q. Correct?

A. I don't recall any.

(Whereupon, Deposition Exhibit 14 was marked for identification.)

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MR. JOHNSON: Q. Okay. I'm just showing you what's been marked as Exhibit 14, an e-mail from Maribeth Riggs to Dave Egan dated January 21st, 2000, Bates numbers BUR0078200 to BUR0078202. And attached to this e-mail is a PowerPoint presentation. Do you recall

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understanding that trip reports could be included in
those fields?

A. I suppose it's possible.

(Whereupon, Deposition Exhibit 8
was marked for identification.)

MR. JOHNSON: Q. Okay, Mr. Walters, I'm

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handing you what has been marked as Exhibit Number 8.
And this is a string of e-mails that's two pages long,
BUR0266530 through BUR0266531. And on the bottom of the
first page is an e-mail from Mike Moskowitz dated
Tuesday, July 27, 1999, and it's to Roundtable, Roberta
Sanchez, Jason Boatman, Gary Ramey, Michael -- is it
Magbie?

A. Magbie.

Q. And Brad Thayer. Were you included in the
Roundtable alias?

A. No.

Q. Do you recall receiving this e-mail or seeing
it before?

A. No.

Q. Have you had time to review it yet?

A. I haven't read.

Q. Okay. Why don't you take a moment to skim it
over? I'm interested in that e-mail and the one
immediately after it.

A. Okay.

Q. Does this document refresh your recollection
that trip reports would be included in Goldmine?

A. Well, again, it's possible that they would,
you know, enter the data into Goldmine. I'm not sure
that it was done in every days.

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Q. Have you -- in all of your work with Goldmine
did you ever see a trip report in Goldmine?

A. I don't recall seeing one.

Q. But would it be unusual to see one in there?

MR. WECKER: Let me object to the vagueness of
the term "trip report." I could see some of these
entries in Exhibit 7 being called trip report where it
just indicates "met with so and so" versus a lengthy
document like what's attached to Exhibit 8.

MR. JOHNSON: Sure. I can clarify that.

MR. JOHNSON: Q. You have already testified,
Mr. Walters, that the information entered in Goldmine
could be I think very brief entries or it could be
rather lengthy entries. And my question is, concerning
trip reports that are a little bit more lengthy, perhaps
this one is roughly a page long in an e-mail. Did you
see entries roughly this size in Goldmine, reporting on
a trip to a customer's offices?

A. I do not recall seeing anything this small.

Q. Do you recall seeing other trip reports
recounting a visit to a customer's offices that maybe
were longer or shorter in length?

A. Not directly, no, I don't.

(Whereupon, Deposition Exhibit 9
was marked for identification.)

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the case, though; correct?

A. Correct.

Q. Do you know why Burst made a change to begin recording viewing the web site demo?

A. Well, there was a desire by the various departments within Burst to track who was visiting the site and viewing the demo. And eventually we did succeed in having a way to track that with demonstrations and have the information imported into Goldmine so that we could later report.

Q. The visitor who viewed the demonstration, did they download anything or were they just viewing this on loan?

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A. They were viewing it on line. They did download the bridge software in order to enable the Burst enabler product.

Q. Did they have to sign any kind of an agreement related to their ability to download the bridge software?

A. I don't recall.

Q. And at this point in time the web demo visitors, these were being recorded in Goldmine?

A. At this point they were, yes.

Q. Was that an automatic process?

A. I believe it was by this time. I seem to recall that there was quite a bit of work required in order to enable Goldmine to interface with the web site.

Q. I think we talked briefly before about whether any outside consultants were involved in maintaining the Goldmine database and I think you testified that you didn't recall any outside consultants. Is that the case?

A. Correct.

(Whereupon, Deposition Exhibit 16 was marked for identification.)

MR. JOHNSON: Q. Showing you what's been marked as Exhibit 16, and this is an e-mail thread. The top e-mail in this thread is from Jason Boatman to Craig

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Dahl and Rick Jones, copying Crystal Neal, Joseph Erlemann, Dave Egan, and Suzanne Lentz, dated May 4, 2000, and Bates number BUR0084810.

Have you seen this e-mail thread before, Mr. Walters?

A. I don't recall seeing this before.

Q. The first e-mail in the thread, I guess the furthest back in time, the May 2nd, 2000 e-mail at the bottom, do you recall what the import function was in Goldmine?

A. Well, as I referred to earlier, Goldmine has an import function that would allow you to import data from an outside source. So, Crystal must be referring to one of those functions.

Q. And what sorts of outside sources would you be able to import from?

A. For instance, I'm just -- it would be maybe a tab delimited file, or something of that nature.

Q. Could you import from Outlook?

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was marked for identification.)

MR. JOHNSON: Q. Okay, Mr. Walter, I'm showing you Exhibit 11 which is BUR0040357. And I'm interested in the e-mail from Maribeth Riggs dated October 6, 1999, to the sales group, business development, and a copy to the Roundtable. Were you included on the sales group alias at this time?

A. I believe I was.

Q. Do you recall receiving this e-mail or seeing it before?

A. No, I do not.

Q. Any reason to believe you didn't receive it?

A. No.

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Q. And I'm interested in kind of the middle part of that e-mail that begins, "Those of you wishing to distribute Release 1.2 CDs for evaluation purposes and beta testing must first complete the following steps." And the first step there is, "Enter all account information into Goldmine beforehand, including the name of the assigned IVT sales engineer."

Is it your understanding that Burst did track beta Release 1.2 at this time October 6, 1999, in Goldmine?

A. Yes. We would track the contact information and the process of receiving the required paperwork.

Q. And as we discussed before, at this time he were also requiring a software evaluation agreement form; correct?

A. Correct.

Q. And as a third point you were also requiring a joint non-disclosure agreement form; is that correct?

A. Yes.

Q. I believe earlier you testified with regard to some of the beta evaluations that you didn't always require a non-disclosure agreement.

A. Well, my memory may be faulty in the sense that at this time frame we were requiring it. Obviously this refreshes my memory that we did require it.

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Q. Just at this time or that you did earlier on also?

A. I don't recall if every situation we did. But it appears that we did, you know, on this, based on this document. Now, are you questioning me regarding the NDA?

Q. Yes. And the earlier question I had posed to you a while back in the deposition was about the NDA also and I believe that you testified that you couldn't recall whether those were signed as a matter of course.

A. Well, I remember -- I don't recall that the NDA being part of that question. I remember the evaluation agreement. I do recall that the evaluation agreements were required. And after reading this I do recall now that we did require NDAs.

Q. Okay. During the course of your employment at Burst from 1999 to the present?

A. Correct.

Q. And so it's your testimony that from that time

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marked as Exhibit 18 --

THE REPORTER: 19 I think.

MR. JOHNSON: Q. This document is labeled BUR0117502 to BUR0117505. It's an e-mail from Amy Hyde dated April 12, 2000 to business development, marketing, sales, engineering, I am sorry, sales engineers and the sales group entitled "April Newsletter."

Do you recall who Amy Hyde was?

A. She worked in our marketing department, as I recall.

Q. And she states here in her first sentence "Attached please find this month's newsletter which was distributed today to our Goldmine database." Do you

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know what she's referring to here?

A. Well, I would speculate that it's a mail list taken from Goldmine contacts.

Q. She attaches the newsletter in the next three pages of this document entitled Burst bulletin. Have you -- did you ever receive a Burst bulletin while you were at Burst?

A. I don't recall. I do notice that this date on here is April 12, 2000. At that time I was no longer in the sales department. I was working in the legal department.

Q. Would you have again included on any of the aliases in the "to" line?

A. I might have. I don't recall this bulletin, though.

Q. And you don't recall that newsletters were sent out through Goldmine?

A. No, I do not.

Q. Just a few questions, Mr. Walters, about the access that employees at Burst had to Goldmine. Did everyone have the same access to Goldmine, as far as the ability to add information, edit information, or delete information?

A. I don't know. I'm not familiar with who had permissions.

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Q. I think you mentioned a Goldmine administrator before. Did that person have the ability to go in and delete information that a sales representative in the field would have entered in?

A. I would assume so.

Q. Did sales representatives have the ability to edit content that other sales representatives had entered into Goldmine?

A. I don't recall if they did or not.

Q. Do you recall if any of the Goldmine files were protected in any way, or were a read-only file?

A. I don't recall.

Q. If you wanted to delete information in Goldmine, how would somebody go about doing that?

A. I cannot recall deleting any information, so I don't know at this point.

Q. And we have talked about this briefly before, but did any third parties or outside vendors have the

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went into making the decision to erase the database?

A. I'm sorry.

MR. WECKER: Let me object to the extent that it assumes that there was a separate decision to erase that database as opposed to the other data that was on that server at the time.

MR. JOHNSON: Q. When Burst decided to sell various pieces of hardware -- and it may have been at different times -- but in general did Burst keep a copy of any information on the servers that it was selling before it erased them?

A. I'm not aware of any copies being made.

Q. Would you consider the information included in the Goldmine database to be valuable customer information?

A. Yes, I would.

Q. And why do you consider it valuable?

A. Well, it's valuable in the sense that it's good to know what customers had to say about the product and what our employees, you know, the notes they were taking and so on, to establish time lines for certain events.

Q. Isn't it also true there is a lot of value and goodwill built up through all the contacts that your sales staff had made and that there is just value

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inherent in all the phone numbers and attempts to make contact with customers?

A. Potentially.

Q. Mr. Walters, have you been able to come to any conclusions as to why someone would destroy this type of valuable information and not keep a copy of it?

A. Come to a conclusion?

Q. Correct. Have you been able to reach a -- do you have an understanding as to why this information would be destroyed?

A. I do not, other than the machine is being prepared for sale. There is no other reason for the data to be wiped clean.

Q. Have you noticed -- scratch that. Strike that.

Have you in your experience with Burst since this time and since this April 26, 2001 date, have you had difficulty contacting customers or potential customers because the Goldmine database no longer exists?

A. No. And the reason being we no longer are actively selling the product. We shifted focus to a licensing effort, IP licensing.

Q. Are in I of the customers that you license to ones that were in the Goldmine database?

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A. You will have to clarify that. By license to, what do you mean?

Q. What product are you licensing currently?

A. Well, we have the Burstware software, the last

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Q. In your vocabulary is the term spreadsheet and database interchangeable?

A. Yes, I do interchange them.

Q. And do you know what this database housed, as far as content or information?

A. It's a spreadsheet or database that listed the license keys that had been issued along with the company name and the parameters associated with the license, the key itself, which we could determine using just the key we could determine the parameters that the key has set to it.

Q. And it's your testimony, then, that this database does not refer to the Goldmine database or the Vantive database?

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A. That's correct.

Q. Have you had any conversations with Mr. Lang about the missing information in Goldmine?

A. What missing -- I am not sure what you mean by --

Q. Well, the data that was erased in Goldmine and the fact that it's now missing.

A. I have -- we have discussed where the server would be and when it might have been sold. Nothing beyond that.

Q. Either -- I am sorry. Go ahead.

A. No, I am finished.

Q. Has either Mr. Lang or any of the other employees at Burst ever since April 26 of 2001 ever expressed regret for having wiped clean the server that housed the Goldmine database and sold it without keeping a copy?

A. No, they have never specifically said I regret.

Q. Have you spoken with any Burst employees that recognized that this was a loss, the wiping clean of this database on this server was a loss of valuable information to the company?

A. I have not discussed with any Burst employees, no.

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Q. Do you yourself, Mr. Walters, feel that the wiping clean of this information from the server was a loss of valuable information to Burst?

A. Yes, I do.

Q. And it's your testimony today that you have done everything you could to determine where this information might be?

A. Yes, I have.

Q. Is there anything else you would like to tell me today about your efforts to locate the server that houses the Goldmine database or any copies of that information on other servers, like Vantive or any back up tapes?

MR. WECKER: I object to the form. You can go ahead.

MR. JOHNSON: We can take them one at a time.

THE WITNESS: I really don't have any additional comments at this time.

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MR. WECKER: My objection was to is there anything else you would like to tell me, not to the compound nature.

MR. JOHNSON: And I will ask that.

MR. JOHNSON: Q. Is there anything else that you would like to tell me about your efforts to search for this information?

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MR. WECKER: Same objection.

THE WITNESS: Not at this time.

MR. JOHNSON: Q. One other question, Mr. Walters. While you were at Burst from March -- let's see. Was it March or May of 1999 to the present?

A. No, it was March 1st.

Q. Okay. From March 1st, '99, to the present did Burst consider suing anyone during that time period?

A. Not to my knowledge.

Q. Was one of your duties at Burst to monitor potential infringers of Burst technology?

A. I maintained a list of potential licensees.

Q. Okay. But during -- so, from March of 1999 to the present, Burst never considered suing anyone; is that your testimony?

A. I don't -- I am not aware of any plans to sue anyone in that time frame.

Q. And obviously, other than the present litigation?

A. Right.

(Whereupon, Deposition Exhibit 35 was marked for identification.)

MR. JOHNSON: Q. Showing you an e-mail BURO290896, it's from Tom Koshy to employees dated March 15, 2000. Do you recall seeing this e-mail on or

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about this time?

A. Vaguely, I do recall, yes.

Q. And Mr. Koshy states, "Eric Walters is currently working as the manager of sales support and is transitioning into the position of manager intellectual property effective March 23rd, 2000." Is that correct? Was that your understanding at the time?

A. Mm-hmm. Yes.

Q. And what were your new job duties with respect to that position?

A. My responsibility was to oversee the patent development process within Burst which included the payment of patent annuities, maintenance of annuities and so forth on our existing portfolio, and also establish a committee and a process to evaluate intellectual property developed by Burst employees and a process whereby those inventions could be patented, reviewed and patented.

Q. And I think we just talked about this a minute ago but was part of these new responsibilities then monitoring other companies for possible infringement?

A. I monitored companies or received input from various people from time to time, not as infringers, per se, but as potential licensees.

(Whereupon, Deposition Exhibit 36

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ability to edit the Goldmine content or delete it?

A. I don't know.

Q. If a prospect ultimately chose not to go with the Burstware solution were they kept in the database or moved into an inactive folder or otherwise removed?

A. It's my recollection that they would stay in the database but be marked as inactive in some way.

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MR. JOHNSON: Time for another break?

MR. WECKER: Lunch?

MR. JOHNSON: Yes, sure. Go off the record.

THE VIDEOGRAPHER: Going off the record, the time is 12:14 p.m.

(Lunch recess taken from 12:14 to 1:02.)

THE VIDEOGRAPHER: Back on the record, the time is 1:02 p.m.

MR. JOHNSON: Q. Okay, Mr. Walters. I just want to shift gears and get a little bit more into more of a technical nature of Goldmine and how it was implemented in the Burst office in San Francisco and also out in the sales field with the sales force that was located in different parts of the country. Can you tell me first of all a little bit how Goldmine was configured to work in the San Francisco office?

A. I'm not sure what you mean by configured.

Q. Was the Goldmine database on a server in San Francisco?

A. It -- yes.

Q. Okay. And as we I think previously established, that was server four?

A. Based on that document you showed earlier, yes.

Q. Was there also a client side version of

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Goldmine that resided on a laptop or a PC?

A. Well, there was a client component that people used to view data off line. And then, when the central database was maintained on the server and they could synchronize with it and bring their copy up to date.

Q. So, is it fair to say that an I had Burst employee, whether in the sales -- whether in San Francisco or out in the field, had a copy of Goldmine on their individual PC or laptop that stored the Goldmine information?

A. They may have, yes.

Q. If they were a Goldmine user, that's how the configuration was set up?

A. Yes.

Q. And then how often would the individual -- I believe you used the phrase sync up, or how often would that happen, that they would sync up with the main server located in San Francisco?

A. It varied from user to user. It was up to each user to synchronize their own copy.

Q. And how did they go about synchronizing?

A. If they were in a remote office, they could dial in to the Burst office over the phone line and connect to the Goldmine application and synchronize that way, using Goldmine to synchronize.

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Q. And if they were in the -- located in the San Francisco office how would they sync up?

A. It would be off the network.

Q. So even if it wasn't the most current collection of data, each Burst employee who had the Goldmine software installed on their computer had on their computer a -- the contact information that would be in Goldmine?

A. Yes.

Q. In preparing for this deposition, did you go physically to any of the old laptops or PCs that Burst still has of former employees and look for the Goldmine database on those hard drives?

MR. WECKER: Let me object. No foundation that they still have such computers.

MR. JOHNSON: Q. To your knowledge, does Burst still have any PCs or laptops of former employees in its possession?

A. Just the ones that I mentioned earlier. There were a couple of laptops that were in the -- that we still have. However, I don't believe that those individuals were Goldmine users, because Goldmine is not on them.

Q. You reviewed those?

A. Yes.

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Q. Those machines and there was no Goldmine software?

A. Correct.

Q. Any other hardware or machines that Goldmine could still be on that Burst is still in possession of?

A. Not to my knowledge.

Q. Apart from the server four that you were going to look into?

A. Right.

Q. And just to get an idea of the process of entering data into Goldmine, how did that happen? Was there an icon on the desk top or what are the steps that one took to enter information in?

A. You would -- there's an icon either on your desk top or you go to the start program menu and start the Goldmine application, and from there it would open the data file that you are using.

Q. And at that point you are just running the program off your hard drive and working with the data that's stored on your hard drive?

A. It could be, or it could be working off of the network server, if you are connected.

Q. Do you know how much space on the hard drive the Goldmine application took up?

A. I do not.

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Q. Was it -- would you characterize it as a fairly sizable amount of space that it took up on a hard drive or --

A. I don't recall the file size, to be honest

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with you.

Q. Okay. And you have mentioned synchronize -- the sing king process. Are we talking about a dial in where the PC sent information to the server and the server sent information to the PC or how did that process work?

A. I believe it went both ways so if you had updated your local copy it would update the server with that. So it would update the copy on the server. That copy that's been updated by other users would be singed with the local user.

Q. Just to make it clear when a sales representative was out in the field and they had their laptop with them but weren't, didn't have a connection to the certainty or to the server in San Francisco they could still access their Goldmine information; correct?

A. Yes. They had the software installed.

Q. It would just be saved on the hard drive; correct?

A. Correct.

Q. You have testified that for the most part

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Burst doesn't have the PCs or laptops of the former employees, except for the few that you mentioned. Do you know what happened to those, the hard drives of those laptops or PCs when they left Burst?

A. Well, prior to leaving Burst they were wiped by our IT department, and the majority of the equipment was sold.

Q. And by wiped clean that means they were erased, there was no data on them?

A. No OS or anything.

Q. Was there any thought given at that time to, or consideration, that the Goldmine information was still going to be on the server so that it was okay to erase the information on the individual PCs?

MR. WECKER: Objection. No foundation.

THE WITNESS: I don't know.

MR. JOHNSON: Q. Did you take part personally in any conversations about retaining the Goldmine information when the individual -- sorry. Strike that.

Are you aware of a time where Burst decided to sell individual PCs or laptops of former employees?

A. Yes.

Q. And around that time were there any conversations regarding the information on those laptops and wanting to preserve a copy?

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A. I did not engage in any conversations.

Q. And was there any conversation about Goldmine in particular and wanting that preserve that data?

A. Not that I am aware of.

Q. Mr. Walters, I believe you testified much earlier on, toward the beginning of the deposition, about your knowledge concerning back up procedures with Goldmine, and that you did not have that knowledge. Apart from the Goldmine server, if we are talking about just individual PCs or individual hard drives, do you have any knowledge about the back up procedures related

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Q. And based on your review of this letter, do you have an understanding as to why they returned that software?

A. Apparently it did not -- they did not fulfill the agreement signed by Burst in April of 2000, failed to deliver all the modules.

Q. And which modules were those?

A. Vantive on the go and I believe one of the modules in the engineering module, was incomplete.

Q. Do you have any reason to believe -- actually, strike that.

Is it your understanding that the sales staff at Burst never received the Vantive on the Go product?

A. Yes.

Q. And is it also your understanding that up through this time of December 18, 2000, that the Burst sales staff was not using the Goldmine database either?

A. I can't state definitively one way or the other whether they were or were not, since I do not know directly.

Q. You did previously testify, though, that you believe that they stopped using Goldmine in August of 2000?

A. Based on that e-mail from Crystal, she said that they were taking the Goldmine application down.

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Q. And I believe you testified earlier today and prior to seeing that e-mail that you also thought it was around August of 2000 that Burst quit using the Goldmine database?

A. Correct.

Q. And you don't have any reason to believe that Burst resumed use of Goldmine at any point after August of 2000?

A. No, I do not.

Q. And to your knowledge did Burst use any other customer database after August of 2000?

A. To my knowledge they did not.

Q. Okay. Mr. Walters, I'd like to talk to you a little bit now about what ultimately happened to the Goldmine data. And my first question is just going to be, approximately what time was the Goldmine database erased, wiped clean, or sold?

A. Well, it would have been sometime after August of 2000.

MR. JOHNSON: Let's go off the record.

THE VIDEOGRAPHER: This marks the end of tape number two in the deposition of Eric Walters. Going off the record, the time is 2:04 p.m.

(Recess taken from 2:04 to 2:09.)

THE VIDEOGRAPHER: Back on the record. This

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marks the beginning of tape number three in the deposition of Eric Walters. The time is 2:09 p.m.
MR. JOHNSON: Could you read back the last question and answer?

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To your understanding?

A. It's my understanding that it's common practice to wipe the hard drives in order to prevent any future user of the computer from accessing any data that may be on the hard drives or covering data somehow of a personal nature.

Q. I want to I think clarify your testimony with respect to, based on your investigation, have you been able to determine when the Goldmine database that was on the server that I think the document indicated was server number four, was over written, deleted, in some fashion lost?

A. An exact date?

Q. Well, I understand you can't give us an exact date. Can you tell me what the range of possible dates are based on your investigation?

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A. It would be sometime after the August memo from Crystal Neal indicating that Goldmine is gone or off line, however she termed it. And being moved to Santa Rosa.

Q. So, sometime between August 2000, when that e-mail suggests that it still exists, it's just going off line, and when the server was sold after you moved to Santa Rosa was the time frame in which the Goldmine database was no longer retrievable?

A. Correct.

Q. To your understanding?

A. Correct.

Q. Within that time frame can you narrow that time frame at all based on your investigation?

A. Not to a specific time, no. It would be prior to the move when the other computers were processed in November or December time frame.

MR. WECKER: I thought I had a third area to question you but I can't remember it.

MR. JOHNSON: Q. Can I just follow up on that briefly?

Examination by Mr. Johnson.

MR. JOHNSON: Q. I think Mr. Wecker was characterizing it as the August 2000 time period up until the move to the Santa Rosa office and I believe

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you corrected him and stated it would have been August 2000 only up to the Santa Rosa move.

A. Correct, because it's my understanding the computers were not wiped once they were in our facility in Santa Rosa or in a storage facility. It would have occurred prior to that.

Q. I believe you have testified both ways at this point today about whether it's possible that the server was wiped clean after you moved to Santa Rosa or whether it happened before. And the letter from Mr. Wecker dated July 12, 2004, says that they were, it was wiped clean and sold after the move; correct?

A. I don't believe so.

MR. WECKER: No, that mischaracterizes the testimony. That was the exact testimony I'm trying to clarify which is the letter says the computer was sold

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after the move to Santa Rosa. It doesn't address the issue of when it might have been wiped clean.

MR. JOHNSON: Q. So, wiped clean before the move but then the servers were possibly kept and then sold later? Is that your testimony, Mr. Walters?

A. Yes. They could have been -- they would have been wiped prior to the sale, and the process of wiping the hard drive would have occurred prior to the move to Santa Rosa.

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Q. And on what basis have you come to understand that it was wiped clean prior to the move?

A. Well, that was the process that the other computers that were sold in late December or early December time frame, 2000, they were all wiped when they were sold.

Q. But the Goldmine server was not sold in late December of 2000?

A. Not to my knowledge. I am not aware of it, if if it is. Was.

Q. So is it your testimony that the Goldmine, the server that housed the Goldmine database was wiped clean at the same time as the other computers, which was December of 2000? And those computers were sold in December of 2000, but the server that housed Goldmine was not sold until after the move to Santa Rosa.

A. As I understand, yes, because the machines that went to sap take Rosa were much more expensive machines than the hardware that was sold to employees that were being laid off and so on.

MR. JOHNSON: I think we finally have it clear.

I have no further questions.

MR. WECKER: Okay. Thank you.

THE VIDEOGRAPHER: This marks the end of tape

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number four in the deposition of Eric Walters. Going off the record, the time is 5:28 p.m.

(Discussion off the record.)

MR. JOHNSON: It's Microsoft's position that this deposition remains open because Mr. Walters was not knowledgeable about a few of the topics in the 30(b)(6) deposition notice. No further questions.

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CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2004, I caused a copy of the foregoing Microsoft's Motion to File Surreply Brief and attached Surreply Memorandum in Opposition To Burst's Motion to Compel Microsoft to Produce Documents Relating to its Document Preservation Policy (Filed Under Seal) by overnight courier and e-mail to:

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